



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

March 5, 2001

REPLY TO THE ATTENTION OF:

DT-8J

CERTIFIED MAIL

Receipt No. 7000 0520 0020 5089 2428

Angela Foster-Rice, Esq.
Gardner, Cartan & Douglas
321 North Clark Street
Suite 3400 - Quaker Tower
Chicago, Illinois 60610-4795

Re: LTV "Copperweld, Docket No. EPCRA-5-12001-107"

Dear Ms. Foster-Rice:

I have enclosed one of two original signed copies of a fully executed Joint Civil Complaint and Consent Agreement and Final Order in resolution of the above case. This document was filed on March 5, 2001, with the Regional Hearing Clerk.

Thank you for your cooperation in resolving this matter.

Sincerely,

Robert Allen
Pesticides and Toxics Enforcement Section

Enclosure

cc: Regional Hearing Clerk/E-19J (w/Encl.)
Regina Kossek, Regional Hearing Officer/C-14J (w/Encl.)
Ivan Lieben/ORC/C-14J (w/Encl.)

CERTIFICATE OF SERVICE

I hereby certify that one original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action concerning LTV Copperweld, f/k/a Welded Tube Company, was filed on March 5, 2001, with the Regional Hearing Clerk (E-19)), United States Environmental Protection Agency, Region 5, Chicago, Illinois, and that I mailed by Certified Mail, Receipt No. 7000 0520 0020 5089 2428, the second original signed copy to:

Angela Foster-Rice, Esq.
Gardner, Cartan & Douglas
321 North Clark Street
Suite 3400 - Quaker Tower
Chicago, Illinois 60610-4795

and forwarded copies (intra-Agency) to:

Regina Kossek, Regional Hearing Officer (C-14J)
Ivan Lieben, Counsel for Complainant (C-14J)

Marlene Bronson 3/5/01

Marlene Bronson (DT-8J)
Pesticides and Toxics Branch
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Docket No. **EPCRA-5-12001-107**

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 West Jackson Boulevard
Chicago, Illinois 60604

In the Matter of _____
LTV COPPERWELD _____
f/k/a WELDED TUBE COMPANY _____
CHICAGO, ILLINOIS _____
Respondent. _____

CONSENT AGREEMENT AND
FINAL ORDER

Docket No.

EPCRA - 5 - 12001 - 107

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection (U.S. EPA or Complainant) and LTV Copperweld f/k/a Welded Tube Company, Chicago, Illinois (Respondent) have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b), 22.18(b)(2) at (3).

I. JURISDICTION

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c) and the Consolidated Rules.

II. PARTIES

2. The Complainant, by delegation from the Administrator of the U.S. EPA, and the Regional Administrator, U.S. EPA, Region 5, is Phyllis A. Reed; Chief, Pesticides and Toxics Branch; Waste, Pesticides and Toxics Division; U.S. EPA, Region 5.

3. The Respondent is LTV Copperweld f/k/a Welded Tube Company, incorporated in the State of Delaware and registered to do business in the State of Illinois, and located at 1855 East 122nd Street, Chicago, Illinois 60633 (Facility).

III. STATUTORY AND REGULATORY REQUIREMENTS

4. This Consent Agreement and Final Order (CAFO) serves as notice that U.S. EPA has reason to believe that Respondent has violated EPCRA Section 313, 42 U.S.C. § 11023, and the regulations promulgated thereunder and codified at 40 C.F.R. Part 372, governing the submission of toxic chemical release inventories by owners and operators of covered facilities.

5. EPCRA Section 313, and 40 C.F.R. §§ 372.22 and 372.30 require the owner or operator of a facility that: has 10 or more full-time employees; is covered by the Standard Industrial Classification (SIC) code major groups 20-39; and that manufactured, processed, or otherwise used a toxic chemical listed under EPCRA Section 313(c) and 40 C.F.R. § 372.65, in excess of the threshold quantity established under EPCRA Section 313(f) and 40 C.F.R. § 372.25, during the calendar year, to complete and submit a toxic chemical release inventory form (Form R or Form A) to the Administrator of U.S. EPA and to the state in which the subject facility is located by July 1 for each toxic chemical manufactured, processed, or otherwise used in quantities exceeding the established threshold during that preceding calendar year.

6. As set forth at EPCRA Section 313(f) and 40 C.F.R. § 372.25, the reporting threshold amount for a toxic chemical manufactured or processed at a facility is 25,000 pounds for calendar years subsequent to and including 1989. The reporting threshold for a toxic chemical otherwise used at a facility is 10,000 pounds for calendar years subsequent to and including 1987.
7. Respondent is a person as defined at Section 329(7) of EPCRA and is the owner or operator of a facility as defined at Section 329(4) of EPCRA.
8. Respondent has 10 or more full-time employees, as defined at 40 C.F.R. § 372.3, at its Facility.
9. Respondent operates a facility in Chicago, Illinois, with a covered SIC code of 3317, which falls under SIC code major groups 20-39.
10. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), Complainant, as the Administrator's duly authorized delegate, may assess a civil penalty not to exceed \$25,000 for each violation of Section 313 of EPCRA.
11. In a letter dated May 14, 1999, LTV Copperweld, as Welded Tube Company, invoked the U.S. EPA's Incentives for Self-Policing: Discovery, Disclosure, Corrections and Prevention of Violations final Policy Statement, 60 Fed. Reg. 66708, (December 22, 1995) (Self-Disclosure Policy) by disclosing EPCRA 313 violations it had discovered at its Facility as described in Section IV.

IV. ALLEGED VIOLATIONS

COUNT I

12. During the calendar year 1994, Respondent's Facility processed, as that term is defined by 40 C.F.R. § 372.3, manganese (CAS No. 7439-96-5), a chemical identified by Section 313(c)

of EPCRA and listed under 40 C.F.R. § 372.65, in the amount of 102,630 pounds which is greater than the threshold for reporting, as set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f).

13. Respondent was required to submit to the Administrator of U.S. EPA and to the State of Illinois a Form R for manganese for calendar year 1994 by July 1, 1995.

14. Respondent failed to submit to the Administrator of U.S. EPA and to the State of Illinois a Form R for manganese for calendar year 1994 by July 1, 1995, and did not submit said Form R until July 16, 1999.

COUNT II

15. During the calendar year 1995, Respondent's Facility processed, as that term is defined by 40 C.F.R. § 372.3, manganese (CAS No. 7439-96-5), a chemical identified by Section 313(c) of EPCRA and listed under 40 C.F.R. § 372.65, in the amount of 78,120 pounds which is greater than the threshold for reporting, as set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f).

16. Respondent was required to submit to the Administrator of U.S. EPA and to the State of Illinois a Form R for manganese for calendar year 1995 by July 1, 1996.

17. Respondent failed to submit to the Administrator of U.S. EPA and to the State of Illinois a Form R for manganese for calendar year 1995 by July 1, 1996, and did not submit said Form R until July 12, 1999.

COUNT III

18. During the calendar year 1996, Respondent's Facility processed, as that term is defined by 40 C.F.R. § 372.3, manganese (CAS No. 7439-96-5), a chemical identified by Section 313(c) of EPCRA and listed under 40 C.F.R. § 372.65, in the amount of 102,630 pounds which is

greater than the threshold for reporting, as set forth in Section 313(f) of EPCRA, 42 U.S.C.

§ 11023(f).

19. Respondent was required to submit to the Administrator of U.S. EPA and to the State of Illinois a Form R for manganese for calendar year 1996 by July 1, 1997.

20. Respondent failed to submit to the Administrator of U.S. EPA and to the State of Illinois a Form R for manganese for calendar year 1996 by July 1, 1997, and did not submit said Form R until July 12, 1999.

COUNT IV

21. During the calendar year 1997, Respondent's Facility processed, as that term is defined by 40 C.F.R. § 372.3, manganese (CAS No. 7439-96-5), a chemical identified by Section 313(c) of EPCRA and listed under 40 C.F.R. § 372.65, in the amount of 78,120 pounds which is greater than the threshold for reporting, as set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f).

22. Respondent was required to submit to the Administrator of U.S. EPA and to the State of Illinois a Form R for manganese for calendar year 1997 by July 1, 1998.

23. Respondent failed to submit to the Administrator of U.S. EPA and to the State of Illinois a Form R for manganese for calendar year 1997 by July 1, 1998, and did not submit said Form R until July 12, 1999.

COUNT V

24. During the calendar year 1998, Respondent's Facility processed, as that term is defined by 40 C.F.R. § 372.3, nickel (CAS No. 7440-02-0), a chemical identified by Section 313(c) of EPCRA and listed under 40 C.F.R. § 372.65, in the amount of 77,826 pounds which is greater than the threshold for reporting, as set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f).

25. Respondent was required to submit to the Administrator of U.S. EPA and to the State of Illinois a Form R for nickel for calendar year 1998 by July 1, 1999.

26. Respondent failed to submit to the Administrator of U.S. EPA and to the State of Illinois a Form R for nickel for calendar year 1998 by July 1, 1999, and did not submit said Form R until May 23, 2000.

V. CIVIL PENALTY

27. For each of the five counts described in Section IV, U.S. EPA finds that Respondent violated Section 313 of EPCRA by failing to submit Form Rs.

28. U.S. EPA calculated an initial gravity-based proposed penalty of \$97,607 for those five counts of violation. U.S. EPA has determined that there was no economic benefit associated with the alleged violations.

29. Based upon Respondent's May 14, 1999, invoking of the Self-Disclosure Policy, subsequent substantiation letters, and Respondent's drafting and implementation of a self-policing plan, U.S. EPA determined that Respondent had satisfied eight of the nine Self-Disclosure Policy criteria. Though Respondent did an internal audit to discover the violations, that audit was not part of a systematic nor periodic discovery scheme. However, Respondent satisfies this remaining criteria, the need for systematic and periodic discovery, by committing itself to the terms of this CAFO. Therefore, in accordance with the terms of this CAFO, a one hundred percent reduction of the gravity portion of the civil penalty to be assessed in this matter is appropriate pursuant to the Self-Disclosure Policy and the terms of this CAFO.

30. Pursuant to Respondent's obligations under this CAFO, U.S. EPA and Respondent agree that no civil penalty is to be paid by Respondent for the alleged violations identified in

Section IV, unless the stipulated penalty provisions of paragraph 36 become applicable.

VI. TERMS OF SETTLEMENT

31. Respondent agrees to fulfill the requirements described in paragraphs 34 and 35.

Respondent should make all U.S. EPA submissions pursuant to these requirements to the following person, unless otherwise notified:

Chief, PTES (DT-8J)
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

However, the payment of any stipulated payments, if such payments are necessary, should be paid in the manner specified in paragraph 36(C).

32. All deadlines established in this CAFO for submission of documents refer to the date that the required correspondence or submission is postmarked by the U. S. Postal Service or an equivalent private mail carrier. Any deadlines which fall on a weekend or holiday shall be extended until the following business day.

33. A "responsible corporate official" for purposes of the certifications mentioned in paragraphs 34 and 35 means a president, secretary, treasurer, environmental compliance manager, or vice-president of the corporation or legal entity, or any person who performs similar policy or decision-making functions for the corporation or legal entity.

34. Self-Policing Plan:

- (A) Concurrently with its signing of this CAFO, Respondent has drafted a self-policing plan, which it calls an "EPCRA 313 Reporting Compliance Management System" plan (Plan), to track its compliance with EPCRA 313 reporting

requirements for all chemicals manufactured, processed, or otherwise used at its Facility.

- (2) By this CAFO, Respondent certifies that it has fully implemented the Plan at its Facility. Respondent further certifies that, to the best of its efforts, it will continue to implement the Plan into the future.

35. Follow-Up EPCRA Compliance Audit: Not before 1½ years but no later than 2 years from the effective date of this CAFO, Respondent shall perform a comprehensive EPCRA compliance audit for its Facility in accordance with the standards set out in the appendix to U.S. EPA's 1986 Environmental Auditing Policy Statement, 51 Fed. Reg. 25004 (July 9, 1986). Within this same time period, a responsible corporate official of Respondent's Facility must certify to U.S. EPA that Respondent has performed a comprehensive and objective audit of its current compliance with EPCRA's regulatory requirements, state the date of the audit and who performed the audit, and state one of the following:

- (1) That Respondent is, to the best of its knowledge, in full compliance with all EPCRA requirements; or
- (2) If the responsible corporate official making the certification does not feel that he/she can certify to full compliance with EPCRA's requirements, then he/she can certify that the audit discovered potential areas of concern, identify those areas of concern, and indicate that Respondent has taken all necessary steps to ensure return to full compliance. In this case, the certification should also contain a compliance schedule.

Respondent shall maintain at its Facility the report documenting the EPCRA audit for a period of 60 days from the date of the audit, and shall produce this audit report to U.S. EPA if so requested at any point during that period.

36. Penalties for Non-Compliance with Terms of the CAFO: If Respondent fails to perform any task set forth in this CAFO within the specified time period, unless such time has been extended in writing by U.S. EPA, the following will result:

- (A) For non-timely submission of documents or certifications under this CAFO, Respondent agrees to pay stipulated penalties of \$300 per day for each day following the missed deadline.
- (B) If Respondent fails to submit the certification that it conducted the comprehensive EPCRA compliance audit, as required by paragraph 35, within 30 days after the 2-year deadline, Respondent agrees to pay a total stipulated penalty of \$20,000, and no longer needs to pay the accrued daily stipulated penalties provided for in paragraph 36(A). Respondent no longer needs to provide the certification.
- (C) Payment of stipulated penalties, interest, handling charges, and nonpayment penalties, if necessary, shall be made within 30 days of Respondent's receipt of a demand letter by U.S. EPA requesting payment of stipulated penalties. Within 30 days of notification by U.S. EPA, Respondent shall pay an amount calculated in accordance with paragraphs 36(A) and 36(B), as stated in the demand letter, by forwarding a cashier's or certified check by first class mail for the appropriate amount payable to the "Treasurer of the United States of America" to:

U.S. EPA - Region 5
P.O. Lock Box 70753
Chicago, Illinois 60673

The check shall bear the case docket number, the name of the respondent, and the billing document number. Respondent shall also forward copies of the check by first class mail to U.S. EPA, in care of:

Regional Hearing Clerk (E-19J)
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Ivan J. Lieben, Assistant Regional Counsel (C-14J)
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

PTES Secretary (DT-8J)
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

- (D) Interest will accrue on any stipulated penalty payment amount overdue, in accordance with paragraph 36(C) at a rate established pursuant to 26 U.S.C. § 6621(a)(2). Additionally, Respondent must pay a \$15 handling charge each month that any portion of the stipulated penalty is more than 30 days past due. Finally, U.S. EPA will assess a five percent per year penalty on any principal amount not paid within 90 days of the date that stipulated penalties become due.
- (E) If Respondent does not timely pay any stipulated penalties due pursuant to paragraph 36(C), U.S. EPA may bring an action to collect any stipulated penalty with interest, handling charges, nonpayment penalties, as outlined in

paragraph 36(D), and the United States' enforcement expenses for the collection action.

VII. OTHER MATTERS

37. For purposes of this proceeding, Respondent admits that Complainant has jurisdiction over the subject matter identified in this CAFO.

38. Respondent neither admits nor denies the factual allegations in this CAFO, except to the extent that factual allegations have already been admitted elsewhere in this CAFO.

39. The terms of this CAFO constitute a full settlement of this proceeding with respect to all civil and administrative claims alleged in Section IV.

40. Nothing in this CAFO is intended, nor shall it be construed, to operate in any way to resolve any criminal liability of Respondent or its employees or to limit the authority of the United States to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment.

41. Respondent certifies by signing this CAFO that, to the best of its knowledge, Respondent is presently in compliance with all requirements of EPCRA § 313, 42 U.S.C. § 11001, and all regulations promulgated thereunder.

42. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth in this CAFO.

43. Respondent waives any defenses it might have as to venue.

44. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable EPCRA regulations or other applicable State or Federal environmental statutes.